

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Amendment of the Television Table of)	
Allotments to Delete Noncommercial)	
Reservation of Channel *39, 620-626 MHz,)	MB Docket No. 04-312
Phoenix, Arizona, and to Add Noncommercial)	RM No. 11049
Reservation on Channel 11, 198-204 MHz,)	
Holbrook, Arizona)	

To: Commission's Secretary, Office of the Secretary
Attn: Chief, Video Division, Media Bureau

COMMENTS OF UNIVISION COMMUNICATIONS INC.

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Dated: November 30, 2004

Summary

In its comments, Univision Communications Inc. notes that the proposed dereservation of Channel 39 in Phoenix so that it can be converted to commercial use by NBC Telemundo is contrary to both Commission policy and precedent, and fundamentally harmful to the public itself. While NBC Telemundo asserts that the proposed channel swap with distant noncommercial station KDTP is necessary “to introduce a full-power Spanish-language competitor to Univision in Phoenix,” the popularity of Univision programming among viewers is hardly something that can or should be “cured” by special regulatory treatment for NBC Telemundo.

In arguing for the proposed swap, the parties ignore that: (1) NBC Telemundo’s existing “Phoenix Class A/Holbrook full power station” combination already has over-the-air signal coverage *and* cable carriage equivalent to the other full power stations in Phoenix; (2) merely building out NBC Telemundo’s authorized Holbrook DTV facilities would increase that station’s over-air-coverage from its current 7,147 people to an astounding **2,747,108** people, almost all of whom are residents of the Phoenix area; (3) there is already ample media competition – broadcast, cable, and other – for all viewers in Phoenix; and (4) the Commission’s statutory mandate is to protect the public, not promote individual competitors through regulatory gifts.

There is no public interest rationale for providing NBC Telemundo with a full power station in Phoenix, and to the extent that NBC Telemundo merely desires to expand its distribution options in Phoenix, it could do so in any number of ways that would be far less harmful to the public. It is abundantly clear that the residents of Holbrook, who for over thirty years have shown no interest in having a noncommercial station in their community despite having a reserved noncommercial allotment, and the residents of Phoenix, who would lose half of their noncommercial broadcast programming to the swap, are actually the victims, and not the

beneficiaries, of the proposed swap. Accordingly, Univision urges the Commission to reject the proposed channel swap as both contrary to the public interest and inconsistent with Commission precedent.

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COMMENTS OF UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. ("Univision"),¹ by its counsel, hereby responds to the Commission's request for comment in the above-captioned proceeding.² In the *NPRM*, the Commission seeks comment on a proposal set forth by NBC Telemundo of Phoenix, Inc. ("NBC Telemundo") and Community Television Educators, Inc. ("CTE") to move one of only two noncommercial allotments in Phoenix, Arizona, to the tiny community of Holbrook, Arizona, which the *NPRM* notes is 228 miles from Phoenix.³ The major "benefit" of the swap asserted by NBC Telemundo is "to introduce a full-power Spanish-language competitor to Univision in

¹ Univision, through a subsidiary company, is the licensee of KTVW-TV, Phoenix, Arizona.

² *Amendment of the Television Table of Allotments to Delete Noncommercial Reservation of Channel *39, 620-626 MHz, Phoenix, Arizona*, Memorandum Opinion and Order and Notice of Proposed Rule Making, 19 FCC Rcd 14930 (August 6, 2004) ("*NPRM*").

³ According to the *NPRM*, the distance between Holbrook and Phoenix is 228 miles (*NPRM* at ¶ 7), while Mapquest.com indicates the travel distance to be slightly greater, at over 234 miles.

Phoenix, the nation's ninth-largest Spanish-language television market and the only market among the top ten Hispanic Designated Market Areas lacking such a full-power competitor to Univision"⁴ This is a tired refrain heard before from NBC Telemundo when seeking special regulatory favors from the Commission.⁵

In arguing for the swap, NBC Telemundo: (1) ignores the fact that its existing Telemundo "Phoenix Class A/Holbrook full power station" combination already has over-the-air signal coverage *and* cable carriage equivalent to Univision's full power Phoenix station; (2) ignores the fact that merely building out NBC Telemundo's authorized Holbrook DTV facilities would increase that station's over-air-coverage from its current 7,147 people to an astounding **2,747,108** people, almost all of whom are residents of the Phoenix area; (3) ignores the fact that there is already ample media competition – broadcast, cable, and other – for all viewers in Phoenix, regardless of audience demographic; (4) ignores the fact that, even if "full power television stations in Phoenix" could actually serve as a viable definition of media competition in Phoenix, the Commission has already formally rejected the notion of a separate "Spanish-language market,"⁶ as Hispanics, regardless of language preference, watch a wide variety of programming in both Spanish and English; and (5) ignores the fact that the Commission's statutory mandate is to protect the public, not promote individual competitors. In short, the

⁴ NBC Telemundo Phoenix, Inc., *Joint Motion to Change Ex Parte Status*, MM Docket No. 04-312 (Aug. 26, 2004) at 1.

⁵ In 2003, NBC Telemundo attacked Univision's acquisition of a group of radio stations and sought far-ranging concessions for itself as part of the Commission's review of the proposed acquisition. *See Letter from F. William LeBeau to Ms. Marlene Dortch*, MM Docket MB 02-235 (August 21, 2003).

⁶ *Shareholders of Hispanic Broadcasting Corporation*, 18 FCC Rcd 18834, 18855-18859 (2003).

popularity of Univision programming among viewers is hardly something that can or should be “cured” by special regulatory treatment for NBC Telemundo.

If the need for the proposed channel swap is itself unclear, it is even less clear what conceivable public benefit the proposed “cure” would have. The intended result of the exchange is to augment NBC Telemundo’s array of Class A and low power stations in Phoenix with a full power commercial television station *that has only 3.6% greater population coverage than Telemundo’s existing Phoenix Class A station alone.*⁷ Setting aside other public policy harms from the proposed swap for a moment, this *de minimis* gain in coverage comes at an unacceptable price: the loss of a rare Phoenix noncommercial station to a community too small to successfully support it, with no countervailing increase in broadcast programming (much less programming of a noncommercial nature) to the residents of Phoenix to offset that loss. The net result of the proposed swap would be a reduction in service to literally millions of viewers both in Phoenix and Holbrook – a result that no conceivable public interest policy objective could support. Univision therefore urges the Commission to reject the proposed channel swap as both impermissible under the Commission’s Rules and contrary to the public interest.

BACKGROUND

NBC Telemundo owns KPHZ(TV), Holbrook, Arizona; KPHZ-LP, Phoenix, Arizona; and KDRX-CA, Phoenix, Arizona, all of which are located in the Phoenix Designated Market Area (“DMA”). In addition, KPHZ(TV) holds a DTV construction permit allowing it to construct DTV facilities that will increase the number of people reached by that station **by**

⁷ See Exhibit 1 at Figure 5.

38,400%.⁸ See FCC File No. BPCDT-20020306AAT and Exhibit 1 at Figure 2, attached hereto.

NBC Telemundo acquired all three stations just two years ago, in the Fall of 2002, for a total of \$7.5 million dollars.⁹

In addition, NBC Telemundo's parent company, National Broadcasting Company, Inc. ("NBC"), holds a network affiliation agreement with KPNX(TV), Mesa, Arizona; KMOH-TV, Kingman, Arizona; and KNAZ-TV, Flagstaff, Arizona, all of which are located in the Phoenix DMA.¹⁰ NBC also holds a 32% non-voting equity interest and numerous minority shareholder rights in Paxson Communications Corp., the licensee of Phoenix station KPPX(TV), Tolleson, Arizona.¹¹ Among the rights held by NBC are the right to match any third party offer to purchase a Paxson station (a right of first refusal), and the right to convert Paxson stations to

⁸ KPHZ's digital facilities are estimated to reach 2,747,108 people compared to the 7,147 people reached by the station's current facilities in Holbrook. See FCC File No. BPCDT-20020306AAT; see also Exhibit 1 at Figure 2.

⁹ See FCC File No. BALCT-20020426AAP. In its Joint Petition, NBC Telemundo stated it acquired KPHZ "in the hope" that the station could be upgraded or modified to serve the Hispanic residents of Phoenix. *Joint Petition* at 8. Apparently unsatisfied with the vastly expanded coverage that KPHZ's digital facilities will provide, NBC Telemundo seeks through this proceeding to turn a poor investment into an economic boon at the expense of non-commercial viewers (both Hispanic and non-Hispanic) in Phoenix.

¹⁰ Aside from its holdings and affiliations in the Phoenix DMA, NBC Telemundo's parent company holds, among other things, an ownership interest in approximately 90 full power television stations, and affiliation agreements with over 250 additional stations, two television networks, and numerous cable channels such as USA Networks, MSNBC, CNBC, and Bravo. See http://www.nbcuni.com/About_NBC_Universal/Company_Overview/ (visited Nov. 29, 2004).

¹¹ See *Telemundo Communications Group, Inc.*, 17 FCC Rcd 6958 (2002) at ¶ 20.

NBC affiliates.¹² In addition, NBC holds Joint Sales Agreements, Time Brokerage Agreements, and a National Sales Agreement with the Paxson stations.¹³

Less than a year after acquiring the Phoenix stations, NBC Telemundo and CTE filed a *Joint Petition to Amend the Television Table of Allotments* (“*Joint Petition*”) requesting that the Commission take the extraordinary step of swapping allocations for NBC Telemundo’s newly acquired and extremely distant station KPHZ on Channel 11 at Holbrook with reserved noncommercial educational station KDTP(TV), Channel *39, Phoenix, Arizona, licensed to CTE, thereby providing NBC Telemundo with a full power commercial television station in Phoenix. In the *Joint Petition*, NBC Telemundo states that after buying KPHZ, KDRX-CA, and KPHZ-LP, it considered a number of different engineering solutions to try and improve the coverage of KPHZ, but was unable to do so.¹⁴ Apparently dissatisfied with its \$7.5 million purchase, NBC Telemundo concluded that KPHZ “simply [wa]s not viable for the purpose of serving Phoenix’s Hispanic population,”¹⁵ and bargained for the assistance of CTE to petition the Commission for a channel swap.

Despite admitting that the proposal fails to meet (by a wide margin) the requirements set forth in the Commission’s Rules for noncommercial/commercial channel swaps, NBC Telemundo and CTE proposed the swap anyway, asserting that the channel change was in the

¹² *Paxson Communications Corporation Request for Declaratory Ruling*, filed Dec. 4, 2001 at 3-9.

¹³ *Id.*

¹⁴ *Joint Petition* at 8-9. Whether NBC Telemundo considered the vastly expanded coverage that would be achieved by building out KPHZ’s DTV construction permit authorizing a hundred-fold increase in the station’s power and an increase in the population reached to an estimated 2.7 million viewers is unclear, as its filings in this proceeding fail to even mention the existence of those authorized digital facilities.

¹⁵ *Joint Petition* at 9.

public interest based upon a “unique constellation of facts and circumstances.”¹⁶ However, the proponents of the swap fail to raise any unique facts or circumstances here that would actually support rather than undermine the swap, and the only thing unique about it appears merely to be that no party has ever had the audacity to assert that such a flawed proposal could serve any public interest.

I. THE PROPOSED CHANNEL SWAP IS INCONSISTENT WITH COMMISSION PRECEDENT AND THE PUBLIC INTEREST

The parties’ proposal to remove one of only two noncommercial stations in Phoenix – leaving it as the only top twenty market other than chronically underserved Detroit to have just one noncommercial station – is inconsistent with Commission precedent and contrary to the public interest. As the Commission concluded in the companion order to the *NPRM*, the proposal fails to meet even the threshold standard for channel swaps established by Section 1.420(h) of the Commission’s Rules.¹⁷ Section 1.420(h) provides television licensees with the ability to amend the Television Table of Allotments in order to swap operating channels where one of the licensees operates on a commercial channel and the other operates on a reserved noncommercial educational channel. The rule requires that the two stations operate in the same band (VHF or UHF) and serve substantially the same market.¹⁸ Although the rule has never defined what constitutes “substantially the same market,” Commission precedent makes clear that the signals of the stations involved must substantially overlap.¹⁹

¹⁶ *Joint Petition* at 1.

¹⁷ *NPRM* at ¶ 7.

¹⁸ 47 C.F.R. § 1.420(h) (2004).

¹⁹ *See, e.g., Clermont and Cocoa, Florida*, 4 FCC Rcd 8320 (1989).

As the Commission concluded in its *NPRM*, NBC Telemundo's proposal to change the allotments of KPHZ and KDTP falls far short of the Commission's criteria for such a swap under Section 1.420(h).²⁰ Specifically, the Commission noted that the stations are not in the same band, the predicted Grade B contours do not overlap, the stations do not serve the same market, and the two communities of license are separated by 228 miles.²¹

As a result, the Commission rejected the proposal under Section 1.420(h), and instead issued the *NPRM* asking whether the channel swap could serve the public interest, convenience or necessity under the Communications Act of 1934, as amended.²² However, the Commission has previously made clear that "our policy disfavoring dereservation of reserved noncommercial educational channels has not changed, and that only under compelling circumstances will we consider deviation from this policy."²³ As the purpose of Section 1.420(h) is to define the set of circumstances where the public interest benefits of dereservation may indeed be compelling, and the Commission has already concluded that the proposed swap fails to meet those standards, the legal presumption against the swap weighs quite heavily here. Unfortunately for the proponents of the swap, the only compelling facts and circumstances present here uniformly cut against the swap, which is inconsistent with Commission precedent, contrary to the public interest, and should be rejected.

²⁰ *NPRM* at ¶ 7.

²¹ *Id.*

²² *NPRM* at ¶ 2.

²³ *Amendment of the Table of Allotments to Delete Noncommercial Reservation on Channel *16, 482-488 MHz, Pittsburgh, PA*, 17 FCC Rcd 14038, 14049 (2002).

A. The Proposed Swap Is Contrary to Long-Standing Commission Policy and Precedent

As an initial matter, the proposed channel swap would constitute a radical departure from Commission policy and precedent regarding protection of reserved noncommercial channel allocations. However, the *NPRM* curiously suggests that the proposal might not be absolutely impossible, despite failing to meet the standard set forth in Section 1.420(h), by noting that “the Commission has repeatedly utilized rulemaking procedures to amend the table of allotments, and Section 316 to modify a station’s license to conform to the change in allotment, where those actions have been found to serve the public interest, convenience, and necessity.”²⁴ However, a review of the only two cases cited by the *NPRM* for this proposition fails to support the notion that the Commission may swap reserved and unreserved channel allotments serving entirely different areas. Furthermore, a review of Commission precedent makes clear that the proposed channel swap would be an unprecedented application of the Commission’s discretion under the public interest standard and Section 316 of the Communications Act.

Both of the cases cited by the *NPRM* in support of considering the proposed swap are not merely distinguishable from the instant circumstances, but together explicitly prevent such a result. For example, in *Amendment of Section 73.606(b), Buffalo, N.Y.*, the Commission permitted the licensee of both a commercial and noncommercial station in Buffalo to exchange the designations so that the licensee could sell one of the stations to a third party.²⁵ In that case, the petitioning party was the licensee of both stations, and the net result of the change in commercial designation was zero, as there was one reserved noncommercial station in the area

²⁴ *NPRM* at ¶ 8 (citations omitted.)

²⁵ *Amendment of Section 73.606(b), Buffalo, NY*, 14 FCC Rcd 11856 (1999), *aff’d*, 16 FCC Rcd 4013 (2000).

before the swap and one reserved noncommercial station in the area after the swap. The Commission was careful to limit its actions in *Buffalo* to similar situations:

[T]here are only a handful of other pairs of noncommercial educational television stations that are co-owned in communities *and* one station is operating on an unreserved channel, just as in the instant case. These cases differ from situations in which there are two public stations in a market operating on reserved channels. Those would differ from the instant case, as they would require loss of a reserved channel in the community, and thus require a different standard of review.²⁶

Furthermore, indicating that Section 1.420(h) may indeed define the exact boundaries of what constitutes sufficiently compelling circumstances to justify a swap, the swap at issue in the *Buffalo* case did in fact meet the requirements of Section 1.420(h). In granting the swap in the *Buffalo* case, the Commission emphasized that, “[t]his action does not remove or add any channel, nor alter the total number of channels in Buffalo which are reserved for noncommercial educational use.”²⁷ That is certainly not the case with the proposed swap here.

The only other support offered by the *NPRM* for the Commission’s “repeated” utilization of rulemaking proceedings to achieve changes such as the one advocated here is the Commission’s order in *Intraband Television Channel Exchanges*²⁸ which adopted Section 1.420(h) – the precise provision with which the proposed swap fails to comply. While the *Intraband Order* established the Commission’s policy that there should be no absolute prohibition on the exchange of reserved and unreserved channel designations *within a market*, the Commission stressed that such channel swaps, without the need for competitive applications, would be acceptable because of the fact that “the number of reserved and unreserved channels

²⁶ 14 FCC Rcd 11856 at ¶ 10.

²⁷ *Id.* at ¶ 15.

²⁸ *Intraband Television Channel Exchanges*, 59 RR 2d 1455 (1986) (“*Intraband Order*”).

available to provide service *to a given community* will remain the same,”²⁹ something which, once again, is not true in this proceeding.

In fact, the Commission stated very clearly in the *Intraband Order* that “[i]n no circumstances will educational reservations be eliminated through this process.”³⁰ Thus, not only does the *Intraband Order* not provide support for considering the swap proposed here, it affirmatively states that “in no circumstances” will such a swap be permitted.³¹ The proposed swap would necessarily eliminate the noncommercial reservation at Phoenix by moving the reserved channel to distant Holbrook, eliminating over 3.2 million viewers’ access to a local noncommercial station.

Finally, the proposed relocation of KDTP to Holbrook is also contrary to the Commission’s implementation of its mandate to ensure a “fair, efficient and equitable distribution of radio service” as required by Section 307(b) of the Communications Act of 1934, as amended.³² Moving one of only two reserved noncommercial allotments from Phoenix to Holbrook, particularly given that the Commission specifically endeavored in its original noncommercial allotment proceedings to assign two noncommercial allotments to major cities like Phoenix,³³ runs counter to an efficient and equitable distribution of radio services, as it minimizes rather than maximizes the service provided by noncommercial station KDTP. At any rate, the Commission’s authority to effectuate the parties’ unusual proposal is purely an academic inquiry, as the proposal in no way serves the public interest.

²⁹ *Intraband Order* at ¶ 23 (emphasis added).

³⁰ *Id.*

³¹ *Id.*

³² 47 U.S.C. § 307(b).

³³ *See NPRM* at ¶ 9.

B. The Proposed Swap Is Contrary to the Public Interest

1. The Proposed Swap Would Deprive Phoenix Residents of One of Only Two Noncommercial Stations in Order to Relocate That Station to a Tiny Distant Community

The proposed channel swap is contrary to the public interest as it would deprive the Phoenix community of one of only two reserved noncommercial educational television stations in the market. Noncommercial station KDTP commenced operations on Channel 39 in 2001. While NBC Telemundo points to this as a factor in favor of the swap (suggesting that viewers will not be deprived of a long-standing service were the station to be moved), the suggestion that it is in the public interest to deprive three million viewers of a noncommercial station for which they have waited 35 years and which they have now been watching for three years ignores reality. By changing KDTP's community of license from Phoenix to Holbrook, NBC Telemundo would take a noncommercial television station from Maricopa County, with a population of 3,072,149, and relocate it hundreds of miles away in Navajo County, with a population of 97,470³⁴ – resulting in a **97% reduction** in the population in the noncommercial station's local county.

The Commission has a long-standing commitment to encouraging and preserving noncommercial educational television stations, recognizing the important service that such stations provide to their communities:

For more than 50 years through the maintenance of the reserved allocations for noncommercial educational broadcast stations, this Commission has sought to promote the development of a “high quality type of programming” that would be different from the programming generated by the commercial pressures and demands placed on commercial stations. [...] Congress recognized when it adopted legislation to fund the operation of certain public broadcasting stations, it is in the public interest “to encourage the growth and development of public radio

³⁴ *NPRM* at n.9; *see also* <http://www.census.gov>.

and television broadcasting, including the use of such media for instructional, educational and cultural purposes.”³⁵

The Commission has therefore often sought to preserve the benefits provided by noncommercial education stations, stating that “the Commission has repeatedly favored the long-term structural integrity of its noncommercial channel allotments scheme, including the maintenance of channel capacity as a means of facilitating future growth, over the needs of particular licensees, both commercial and noncommercial.”³⁶ Indeed, the Commission noted in 1996 that “[s]ince reserving television channels for noncommercial operation in 1952, the Commission has never dereserved a noncommercial channel without substituting another reserved channel”³⁷

Currently, the community of Phoenix has eight commercial allocations and two reserved noncommercial allocations.³⁸ In addition, three more commercial stations are allocated to communities located close to the city of Phoenix, for a total of eleven commercial television stations and two noncommercial stations serving Phoenix. Adoption of the proposal here would result in twelve full power commercial stations serving Phoenix, but would leave only one noncommercial station serving Phoenix. Such a reduction would put Phoenix at odds with the noncommercial allotments of similarly sized markets. The top twenty DMAs average 3.5 reserved noncommercial channel allotments each.³⁹ In fact, among the top 20 markets, only one market (Detroit) has a single noncommercial allotment. Thus, reducing the number of reserved noncommercial channels allocated to the over three million residents of Phoenix to a single

³⁵ *WQED Pittsburgh and Cornerstone Television, Inc.*, 15 FCC Rcd 202 (1999) at ¶ 17.

³⁶ *Deletion of Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania*, 11 FCC Rcd 11700 (1996) at ¶ 20.

³⁷ *Id.* at ¶ 18.

³⁸ 47 C.F.R. §73.606(b).

³⁹ *2004 BIAfn Television Yearbook* (2004).

station would be wildly outside the range that the Commission has deemed appropriate for large markets, and is clearly not in the public interest.

2. Moving KDTP to Holbrook Would Have Devastating Consequences for That Noncommercial Station

The Commission stated in its *Intraband Order* that the “primary purpose of this proceeding [adopting rules for intraband channel swaps] is to enable noncommercial education stations to improve service to their audiences.”⁴⁰ In the instant situation, however, it is unclear precisely how the proposed swap would allow KDTP to improve its broadcast service to its audience, especially given that KDTP will lose its entire audience if it is relocated to Holbrook. In addition to depriving three million Phoenix residents of a second noncommercial station, the relocation of KDTP to the tiny community of Holbrook would obviously be detrimental to the noncommercial station itself. The proponents of the swap do not, indeed cannot, explain how a noncommercial station would be able to support itself licensed to the community of Holbrook with a population of just 4,917 people,⁴¹ especially in light of the fact that NBC Telemundo, one of the most powerful broadcasters in the United States, professes to be unable to operate KPHZ(TV) in any economically viable way in Holbrook.⁴²

Nonetheless, after outlining a bleak landscape in Holbrook to support its assertion that KPHZ cannot survive there, NBC Telemundo makes the truly astounding statement that “[a]s an NCE facility, however, the station has a more promising outlook because it can be expected to

⁴⁰ *Intraband Order* at ¶ 31.

⁴¹ *NPRM* at ¶ 7; *see also*, <http://www.census.gov>. In stark contrast, and as the Commission points out, “Phoenix is the 6th largest city in the United States, with a population of 1,321,045.” *NPRM* at ¶ 7.

⁴² *Joint Petition* at 9.

draw on sources of funding independent of advertising revenues.”⁴³ NBC Telemundo fails to identify what source of revenue the population of 4,917 in Holbrook will be able to provide to KPHZ as a noncommercial station that NBC Telemundo could not locate for its commercial venture there.⁴⁴

While a noncommercial station, by definition, does not rely solely on advertising revenue, noncommercial stations do rely on underwriting by local businesses seeking to promote public goodwill toward their brand, much as such businesses attempt to do through commercial broadcast advertising. That NBC Telemundo, with the tremendous leverage it exercises among advertisers through cross-selling with its other media properties, has been unable to make a Holbrook station economically viable, leaves no doubt as to the certain doom awaiting a noncommercial station in Holbrook.

Indeed, the proponents of the swap are unable to point to a single community comparable to Holbrook and its surrounding environs that has been able to even support a noncommercial station, much less generate the improvement in noncommercial service that is required for the proposed swap to even be seriously considered. The lack of underwriters/advertisers in Holbrook that has so befuddled NBC Telemundo can hardly be adequately supplemented by donations from local civic, cultural, and educational institutions or viewers themselves, all of which are in short supply in Holbrook, particularly when compared to Phoenix. The notion that

⁴³ *Joint Petition* at 21.

⁴⁴ Despite NBC Telemundo’s rosy prediction, it also seems highly unlikely that cable systems in the market will continue to carry Class A station KDRX-CA if the station is ultimately licensed to CTE and no longer carries Telemundo programming. *See Joint Petition* at 37 n.83. Regardless, if such a full power/Class A arrangement with cable carriage is patently inadequate for NBC Telemundo – the very premise of the proposed swap – it is equally inadequate (if not more so) for CTE.

KDTP would be able to survive in Holbrook, a community with a minute fraction of the population, businesses, and institutions that Phoenix has, is pure fantasy.

The primary premise of the Commission's channel swap doctrine is the notion that the noncommercial station will be aided by the proposed change in allotments.⁴⁵ In the instant circumstance, it is clear that: (1) KDTP itself would be harmed, not helped, by moving it to a community with a population of 4,917; (2) noncommercial viewers (indeed all viewers) in Phoenix will have less, not more programming available, if the swap is permitted; and (3) viewers in Holbrook will, at best, have the same amount of local broadcast programming available as before, and given the economics of noncommercial broadcasting, likely will have less (and probably none, ultimately). While the proponents of the swap must demonstrate that "one plus one equals three" in order to present a viable public interest benefit from the swap, any analysis of the actual facts here must unavoidably conclude that "one plus one equals one-half," with the public coming up with the short end in every case. This is not even a situation where the argument can be made that one segment of the public must be harmed in order to benefit another segment of the public (which would be patently inadequate to support the swap in any case), as the only conceivable winners in the proposed swap are not members of the public, but NBC Telemundo and CTE.

While NBC Telemundo states that a grant of the proposal "will result in the payment of substantial consideration to CTE,"⁴⁶ it is unclear from the *Joint Petition* exactly how much the proposed payment would be, or for how long it would allow KDTP to continue broadcasting once forced into exile two hundred miles away from the main population center in the market.

⁴⁵ See *supra* text accompanying note 40.

⁴⁶ *Joint Petition* at 29.

Even assuming that CTE actually uses this payment purely to support future operations in Holbrook, the Commission would effectively be handing the residents of Holbrook a station with a burning fuse – one that will survive only so long as the money lasts. “Short-sighted” would be an optimistic appraisal of such an approach to channel allocation, and the Commission has never accepted such a premise in making noncommercial allocations. In any case, the fact that CTE stands to pocket a significant payout as a result of this channel swap is hardly a point in its favor, and certainly cannot offset the loss of one of Phoenix’s two noncommercial stations.

3. Historical Proof Demonstrates That There Is No Demand for a Noncommercial Station in Holbrook, and It Is Certainly Unnecessary to Rob Phoenix Residents of Noncommercial Service in Order to Reconfirm That Fact

As support for the notion that removing KDTP from Phoenix and relocating it to Holbrook would be in the public interest, NBC Telemundo states that grant of the proposal would eliminate an NCE white area in Holbrook.⁴⁷ Holbrook, however, had a reserved noncommercial channel allotment for over thirty years, during which time no one ever applied for the allocation.⁴⁸ Clearly there is no demand for, or more significantly, support for, a noncommercial television station in Holbrook. The fact that a reserved NCE allotment lay fallow in Holbrook for more than three decades is proof positive that the fundamental public interest premise of the swap is bankrupt.

⁴⁷ *Joint Petition* at 22.

⁴⁸ *NPRM* at ¶ 11.

C. The Proposed Channel Swap Is Unnecessary, as NBC Telemundo Already Competes in Phoenix and Has Numerous Alternatives For Improving Its Program Distribution That Would Not Harm Existing Noncommercial Service in Phoenix

1. The Proposed Swap Will Not Improve Commercial Broadcast Service in Phoenix

NBC Telemundo states in the Joint Petition that KPHZ “has never operated profitably and could not do so in the foreseeable future. Thus, it is virtually certain that the station, operating commercially, will not survive.”⁴⁹ Of course, even if this were true, it is not incumbent upon the Commission, nor the residents of Holbrook and Phoenix, to save NBC Telemundo from a supposedly poor business decision. However, once again demonstrating its desire to avoid confusing the Commission with relevant facts, NBC Telemundo fails to mention that KDRX-CA, the Class A Telemundo station it operates in Phoenix to relay KPHZ’s programming to Phoenix residents, already reaches a population of **3,105,109 viewers**, 764,800 of whom are Hispanic. *See Exhibit 1* at Figure 1, attached hereto. **This is almost exactly the reach of Univision’s full power television station in the market, KTVW-TV, with which NBC Telemundo claims to be unable to compete.**⁵⁰ *See id.* at Figure 5. Thus, while NBC Telemundo proclaims its inability to serve local Hispanics, that inability certainly has no technical or regulatory basis, and placing the words “full power station” before its call sign will not change that fact.

⁴⁹ *Joint Petition* at 21. NBC Telemundo operates KPHZ, KDRX, and KPHZ-LP as a single unit distributing Telemundo programming throughout the Phoenix DMA. It is therefore misleading for NBC Telemundo to single out KPHZ’s analog coverage alone and assert that the station will go off the air without the benefit of the proposed channel swap.

⁵⁰ *See Joint Petition* at 2, 6; *see also* NBC Telemundo Phoenix, Inc., *Joint Motion to Change Ex Parte Status*, MM Docket No. 04-312 (Aug. 26, 2004).

Moreover, the one limitation of being a Class A station rather than a full power station – a lack of cable must-carry rights – is inapplicable here, as KDRX-CA *is also carried on the Phoenix area cable systems*. See Exhibit 2 attached hereto. Thus, despite having equivalent over-the-air and cable reach to other Phoenix area full power stations, NBC Telemundo wants the Commission to drastically disrupt the television table of allotments, to the detriment of local viewers, merely so that it can be “more equal” than anyone else in the market.

NBC Telemundo is certainly capable of competing in Phoenix already, and this proceeding therefore cannot even be characterized as balancing a claimed improvement in commercial broadcast service against the reciprocal harm to noncommercial service. It instead appears to center solely on the ego gratification of owning a full power station in downtown Phoenix. As virtually all Phoenix residents already have access to Telemundo’s programming both over-the-air and by cable, what public interest basis could there be for robbing Phoenix residents of half of their noncommercial programming while simultaneously abandoning the residents of Holbrook? The answer is “none,” and that answer is unchanged even if the Commission were to accept the absurd premise advanced in this proceeding that the Commission should be in the business of protecting a competitor rather than the public.

2. NBC Telemundo Fails to Address the Simple Option of Building Out Its Authorized DTV Facilities

At the same time that NBC Telemundo paints a dire technical and financial picture of KPHZ(TV) as a commercial station, it neglects to mention that KPHZ holds a DTV construction permit that would increase the station’s power level one hundred-fold, increasing the number of viewers reached by the station from a paltry 7,147 people to an astounding **2,747,108** people. See Exhibit 1 at Figure 2, attached hereto. KPHZ already held this construction permit at the time NBC Telemundo bought the station, and the permit remains valid until April 18, 2005.

Thus, while NBC Telemundo indicates it discarded the possibility of “potential power increases, transmitter site moves and other avenues for achieving improved coverage” before determining that the station was not economically viable,⁵¹ it apparently failed to consider the far more obvious solution to increasing KPHZ’s coverage – build the DTV facility which the station requested and the FCC has authorized. This approach, which actually would benefit Holbrook by vastly improving the vitality of its local station while doing no harm to Phoenix noncommercial viewers, is not even discussed as an option, much less presented to the Commission so that it can draw its own conclusion as to whether the proposed swap is in any way necessary, or just merely desirable to NBC Telemundo and CTE.

In fact, NBC Telemundo compounds the harm from this omission by claiming that the proposed channel swap is the only way to save KPHZ from going dark.⁵² The suggestion that NBC Telemundo paid \$7.5 million dollars for KPHZ but was unaware that it only reached 7,147 people is simply preposterous, and the notion that it would rather shut down the station than build out its DTV facilities in order to serve an additional 2,740,000 people is even more so. Holding the residents of Holbrook hostage while it seeks to negotiate a more economically attractive way of abandoning them is a poor method for improving service to the public.

3. NBC Telemundo Neglects to Discuss Its Other Options for Operating a Full Power Station in Phoenix

Failing to mention the potential for upgrading and improving KPHZ’s facilities, and the lack of any actual increase in audience reach that would arise from the proposed swap given the existing carriage of Telemundo programming on KDRX-CA and KDRX-CA’s extensive cable carriage, NBC Telemundo also fails to discuss other options for acquiring program carriage by a

⁵¹ *Joint Petition* at 8-9.

⁵² *Joint Petition* at 9.

full power station in Phoenix without doing harm to the public. NBC Telemundo, through its parent company NBC, has several avenues for acquiring program carriage on a full power television station in Phoenix if it is dissatisfied with its current distribution system. Providing just one example, NBC Telemundo could seek to have Telemundo programming multicast on the DTV signals of the local NBC-affiliated full power stations.

In the alternative, NBC Telemundo could exercise its substantial ownership stake in Paxson Communications Corporation, including its right of first refusal, to acquire KPPX(TV), the Paxson full power station in Phoenix. It is certainly odd that *the one broadcaster with the most readily available options for acquiring an additional full power station in Phoenix* should instead seek such an extraordinary gift from the Commission as the swap proposed here. However, NBC Telemundo apparently considered and rejected such a marketplace approach given its confidence that the Commission could provide a much cheaper solution to its perceived needs.

Thus, far from being the only way that NBC Telemundo can provide service to Phoenix, the proposed channel swap is merely NBC Telemundo's *preferred* means of satisfying its craving for an improved competitive advantage in Phoenix. Specifically, NBC Telemundo would *prefer* to have a full power station over a Class A station; it would *prefer* that the Commission provide it a full power analog station on Channel 39 in Phoenix, rather than having to build the DTV facilities for the station it just bought; it would *prefer* that millions of Phoenix residents lose one of their two reserved noncommercial educational stations rather than it have to buy a commercial station; and it would *prefer* to abandon Holbrook to a noncommercial operation with no long-term prospects rather than accept its responsibilities as a licensee to serve

that small community. Unfortunately, NBC Telemundo's proposed channel swap is in no one's interest except for NBC Telemundo and CTE.

II. LACKING ANY CONCEIVABLE LEGAL OR FACTUAL BASIS FOR THE PROPOSED SWAP, THE PROPONENTS SEEK TO PREMISE IT UPON THE ILLEGITIMATE AND FALSE CONTENTION THAT THE SWAP WILL PROMOTE COMPETITION IN A NON-EXISTENT "SPANISH-LANGUAGE MARKET"

Having thoroughly discredited any legitimate (and quite a few illegitimate) grounds for the proposed swap, Univision now addresses the irrelevant, but oft-repeated, assertion that the swap is necessary to promote competition in the "Spanish-language market" in Phoenix. In its *Joint Petition*, NBC Telemundo makes the unsupportable claim that the "Phoenix DMA offers no competition or content diversity to its sizeable Hispanic population from full power television stations."⁵³ First, it is worth noting the key language at the end – "from full power television stations." As discussed above, Telemundo serves just as many Hispanic viewers in Phoenix as Univision, both over-the-air and on cable. Whether it utilizes a full power or Class A station or some other means of program distribution is therefore irrelevant. Univision could have just as easily premised its own need for a channel swap on the claim that the Phoenix DMA offers no competition to "Class A television stations carried on Phoenix cable systems," or for that matter, to "stations whose towers use white strobe lights rather than red strobe lights." Obviously, if the programming is available in a similar number of homes, the regulatory designation of the source (or any other factor) is meaningless in determining the existence or absence of competition.

For reasons all too apparent, NBC Telemundo has not even addressed, much less demonstrated, that there is any lack of competition in Phoenix, or that holding its breath until the Commission gives it a full power station in Phoenix will impact that situation in any way. Thus,

⁵³ *Joint Petition* at 5.

the fundamental premise of the swap – that the Commission should assist one competitor over another through favorable regulatory treatment to solve a “marketplace failure” – beyond being a dangerously illegitimate rationale -- is also entirely inapplicable here, where no such “failure” has occurred.⁵⁴

Second, and far more disturbing than NBC Telemundo’s self-serving effort to ignore all forms of competition other than full power stations, is its effort, already explicitly rejected by the Commission,⁵⁵ to ignore all forms of competition that are not in Spanish, even those that specifically target Hispanic viewers. Competition for all viewers, including Hispanic viewers, is intense among the thirteen full power television stations⁵⁶ and eight low power and Class A television facilities that serve viewers in Phoenix. Univision (and Telemundo) compete with all television stations in the market for viewers and advertising revenue, including affiliates of NBC, ABC, CBS, FOX, Azteca, UPN, Telefutura, Paxson and WB, among others.⁵⁷

According to Nielsen data, *more than 99%* of all Hispanic television households in the United States watch one or more English-language broadcast networks.⁵⁸ Indeed, Nielsen data indicates that Hispanics spend more of their time watching English-language television stations

⁵⁴ Of course, even if the Commission were to hand NBC Telemundo a full-power station to cure a claimed Spanish-language market failure, nothing would prevent NBC Telemundo from soon changing the station to any other format, including launching its own NBC affiliate in the market, which would obviously be far more valuable than the Telemundo station it now seeks.

⁵⁵ *Shareholders of Hispanic Broadcasting Corporation*, 18 FCC Rcd 18834, 18855-18859 (2003).

⁵⁶ These stations include: KTVK(TV); KPHO-TV; KAET(TV); KSAZ-TV; KNXV-TV; KPAZ-TV; KTVW-TV; KDTP(TV); KUTP(TV), KASW(TV), KAZT-TV; KPPX-TV; and KPNX-TV.

⁵⁷ It is also important to note that English-language programs are frequently broadcast in Spanish through the Secondary Audio Program (SAP).

⁵⁸ Nielsen, *NHSI Custom Cume Analysis*, February 2003.

than they spend watching Spanish-formatted stations, entirely gutting the very premise of the proposed channel swap.⁵⁹

The Commission has previously rejected NBC Telemundo's efforts to obtain regulatory benefits for itself under the guise of promoting competition in the non-existent "Spanish-language market." Just over a year ago, the Commission rejected the notion that there even is any separate "Spanish-language market" distinct from the general media market. Specifically, in approving Univision's merger with Hispanic Broadcasting Corporation, the Commission concluded that:

with respect to the diversity of viewpoints available to viewers and listeners who speak primarily or only Spanish, we find no lack of available alternatives. Indeed, Spanish speakers likely have more media options available to them today than ever in this country's history. We therefore decline to limit or condition our approval of this transaction on the basis of its purported impact on Spanish-speaking audiences.⁶⁰

The proponents of the proposed swap are entirely unable to rebut this conclusion, either on a national basis or a local basis, despite the fact that it is fatal to their entire proposal. As alluded to in the *NPRM*,⁶¹ the Spanish-speaking population of Phoenix is currently well-served by a significant amount of Spanish-language programming from a variety of sources. Indeed, there are at least four primary service television stations in Phoenix devoted to providing Univision, Telemundo, TeleFutura and Azteca programming twenty-four hours a day. Specifically, Univision programming is carried on KTVW; Telemundo programming is carried on KDRX-CA; TeleFutura programming is carried on KFPH-CA; and Azteca programming is

⁵⁹ Nielsen Media Research, NielsenTV Hispanic People Meter, Sept. 23, 2002 – May 11, 2003.

⁶⁰ *Shareholders of Hispanic Broadcasting Corporation (Transferor) and Univision Communications, Inc. (Transferee)*, 18 FCC Rcd 18834 (2003) at ¶ 57.

⁶¹ *NPRM* at ¶ 11.

carried on KPDF-CA. In addition, there are also considerable non-broadcast options available to Spanish-speaking residents of Phoenix. For example, Cox Cable, the largest cable system in Phoenix, offers the 35 channel Spanish language package “Paquete Latino,” which includes Univision, Telemundo, TeleFutura, Azteca America, Discovery en Español, CNN en Español, History en Español, Fox Sports en Español, ESPN Deportes, MTV Español, VHUno, CineLatino, De Pelicula and De Pelicula Clasic, among others. DBS provider DirecTV offers access to more than 45 Spanish-language channels from the United States, Latin America and Europe, including English-language broadcast channels with alternate Spanish audio.⁶² Similarly, Echostar offers the DISH LATINO and DISH LATINO DOS packages that include, among other programming, Discovery en Espanol, Univision, Galavision, TV AZTECA, Telemundo, GEMS, Television Espanola, TV Chile, SUR, Cine Latino, HTV, Telemundo Internacional, MTVS, Gran Canal Latino, FOX Sports World en Espanol, and DISH CD Latin.⁶³

Given the vast amounts of Spanish-language programming available to viewers in Phoenix, there is simply no merit to NBC Telemundo’s assertion that the needs of the Spanish speaking population are not being met. Given the vast amount of programming, and indeed, the vast amount of Spanish-language programming, available in Phoenix, the assertion that Phoenix would be a far better place for Hispanics if NBC Telemundo were given a full power station is absurd at best, and is far more a reflection of NBC Telemundo’s perceived needs than those of the public.

⁶² See http://www.hispanicprwire.com/print_DTV_Phoenix_ENG.htm (visited November 29, 2004).

⁶³ See <http://echostar.swiki.net/250> (visited November 29, 2004).

CONCLUSION

In its *Joint Motion to Change Ex Parte Status*, NBC Telemundo summarizes the purpose of its *Joint Petition* as two-fold: (1) to introduce a full power Spanish-language competitor to Univision in Phoenix, and (2) to preserve Holbrook's only television station, which cannot be sustained as a commercial outlet.⁶⁴ However, there is no public interest rationale for providing NBC Telemundo with a full power station in Phoenix, and to the extent that NBC Telemundo merely desires to expand its distribution options in Phoenix, it could do so in any number of ways that would be far less harmful to the public than the proposed channel swap, including simply building out the DTV facilities already requested by KPHZ and authorized by the Commission. It is transparent that the residents of Holbrook, who for over thirty years have shown no interest in having a noncommercial station despite having a reserved noncommercial allocation in their community, and the residents of Phoenix, who would lose half of their noncommercial programming to the swap, are the victims, and not the beneficiaries, of the

⁶⁴ *Joint Motion to Change Ex Parte Status* at 1.

proposed swap. Accordingly, Univision respectfully urges the Commission to expeditiously reject the proposed channel swap as both contrary to the public interest and inconsistent with Commission precedent.

Respectfully submitted,

UNIVISION COMMUNICATIONS INC.

By: /s/ Scott R. Flick

Scott R. Flick
Brendan Holland
Paul A. Cicelski

Its Counsel

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2300 N Street, NW
Washington, D.C. 20037
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Dated: November 30, 2004

EXHIBIT 1

TECHNICAL STATEMENT

This technical statement and associated exhibits were prepared to provide information concerning the coverage areas of the following TV stations:

KDRX-CA, Channel 48, Phoenix, AZ
KPHZ(TV/DTV), Channel 11, Holbrook, AZ
KTVW-TV, Channel 33, Phoenix, AZ
KDTP-TV, Channel 39, Phoenix, AZ

Figure 1 depicts the Grade B (64 dBu) contour for KDRX-CA. The total and Hispanic population within the KDRX-CA Grade B contour, based on 2000 Census data, has also been shown on Figure 1.

Figure 2 depicts the Grade B (56 dBu) contour for KPHZ(TV)'s licensed NTSC operation on channel 11 and the 36 dBu, noise-limited contour for KPHZ(TV)'s authorized DTV operation on channel 11. The total and Hispanic population within the contours, based on 2000 Census data, has also been shown on Figure 2.

Figure 3 depicts the Grade B (64 dBu) contour for KTVW-TV. The total and Hispanic population within the KTVW-TV Grade B contour, based on 2000 Census data, has also been shown on Figure 3.

Figure 4 depicts the Grade B (64 dBu) contour for KDTP-TV. The total and Hispanic population within the KDTP-TV Grade B contour, based on 2000 Census data, has also been shown on Figure 4.

Figure 5 is a tabulation of the total and Hispanic population, based on 2000 Census data, within each of the contours depicted on Figures 1-4.

The distances to predicted NTSC Grade B and DTV 41 dBu coverage contours were determined in accordance with the provisions of Section 73.684 and 73.625, respectively. The

average elevations from 3.2 to 16.1 kilometers from the transmitter site were obtained from NGDC 30-second terrain database. Thirty-six (36) evenly spaced were used for determining the average elevations and the distances to coverage contours.

The population to be served within the predicted NTSC Grade B and DTV noise-limited contours was determined by a computer program which totals the population within census enumeration districts located within the Grade B contour. The 2000 Census was employed.

This technical statement has been prepared by or under the direct supervision of W. Jeffrey Reynolds, technical consultant with the firm of du Treil, Lundin and Rackley, Inc., a telecommunications consulting firm located in Sarasota, Florida, who states that his qualifications are a matter of record with the Federal Communications Commission, having been presented on previous occasions. All data and statements contained herein are true and correct to the best of his knowledge and belief.

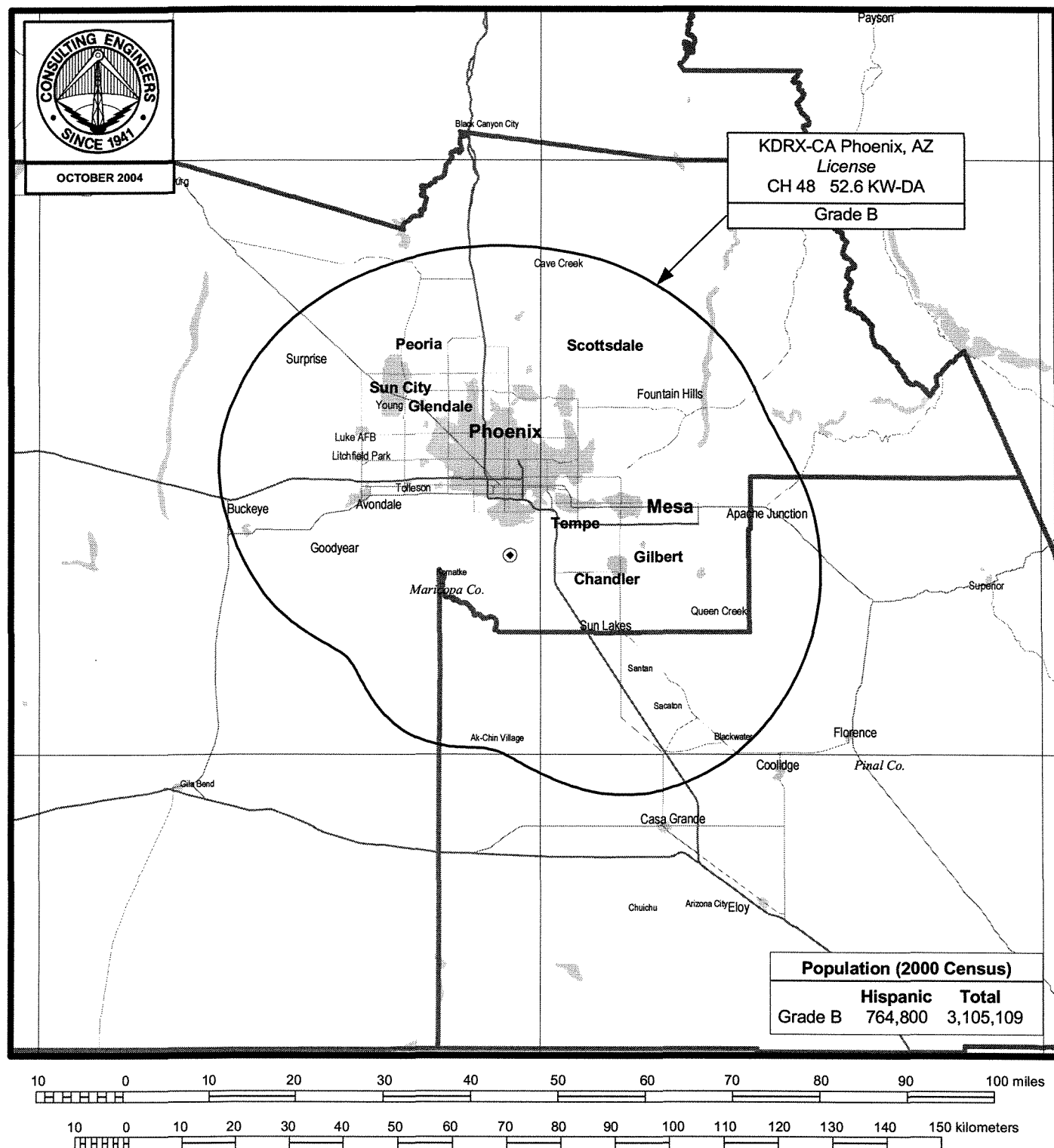


W. Jeffrey Reynolds

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October 14, 2004

Figure 1

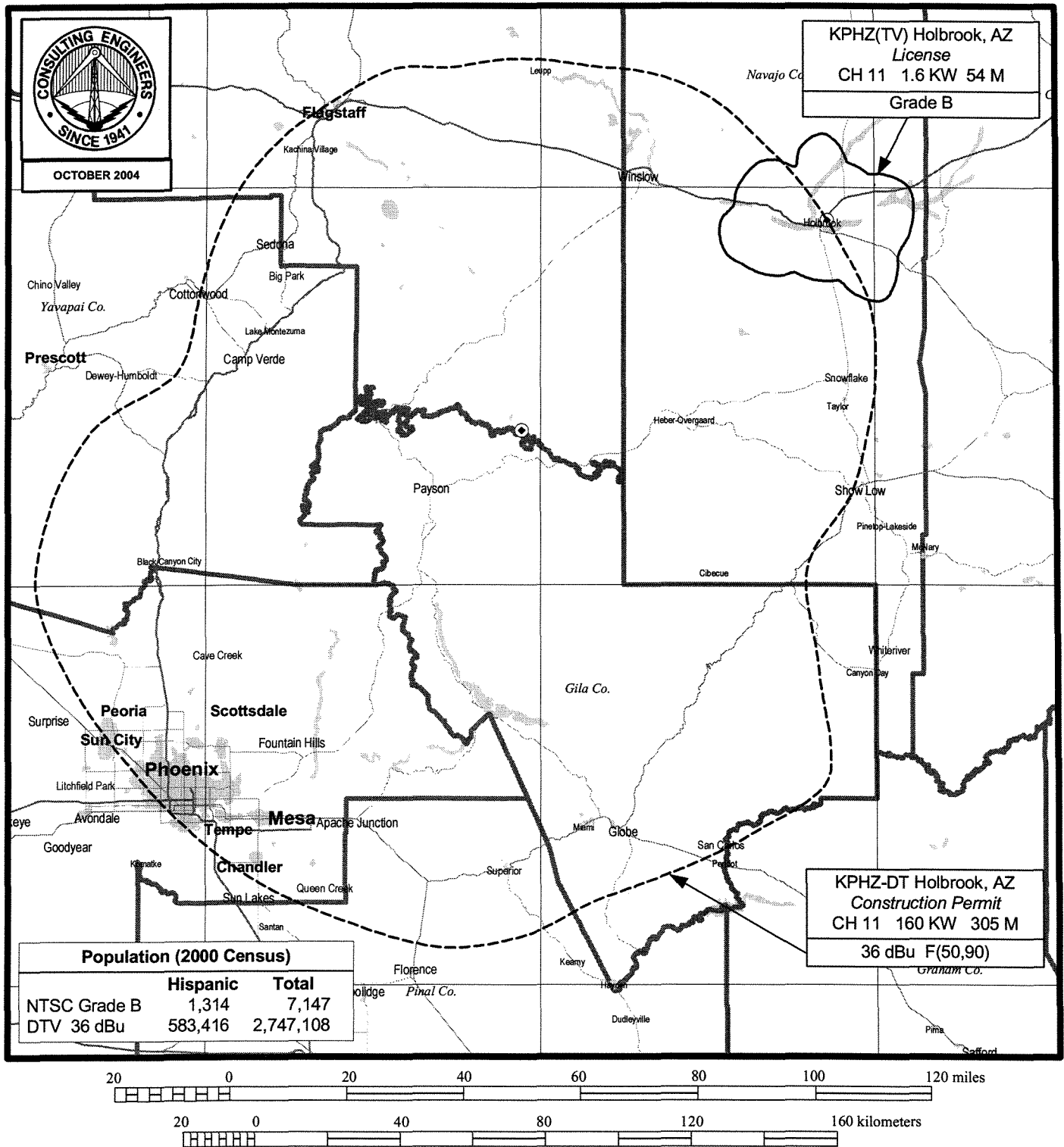


PREDICTED COVERAGE CONTOUR

TV STATION KDRX-TV
PHOENIX, ARIZONA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2

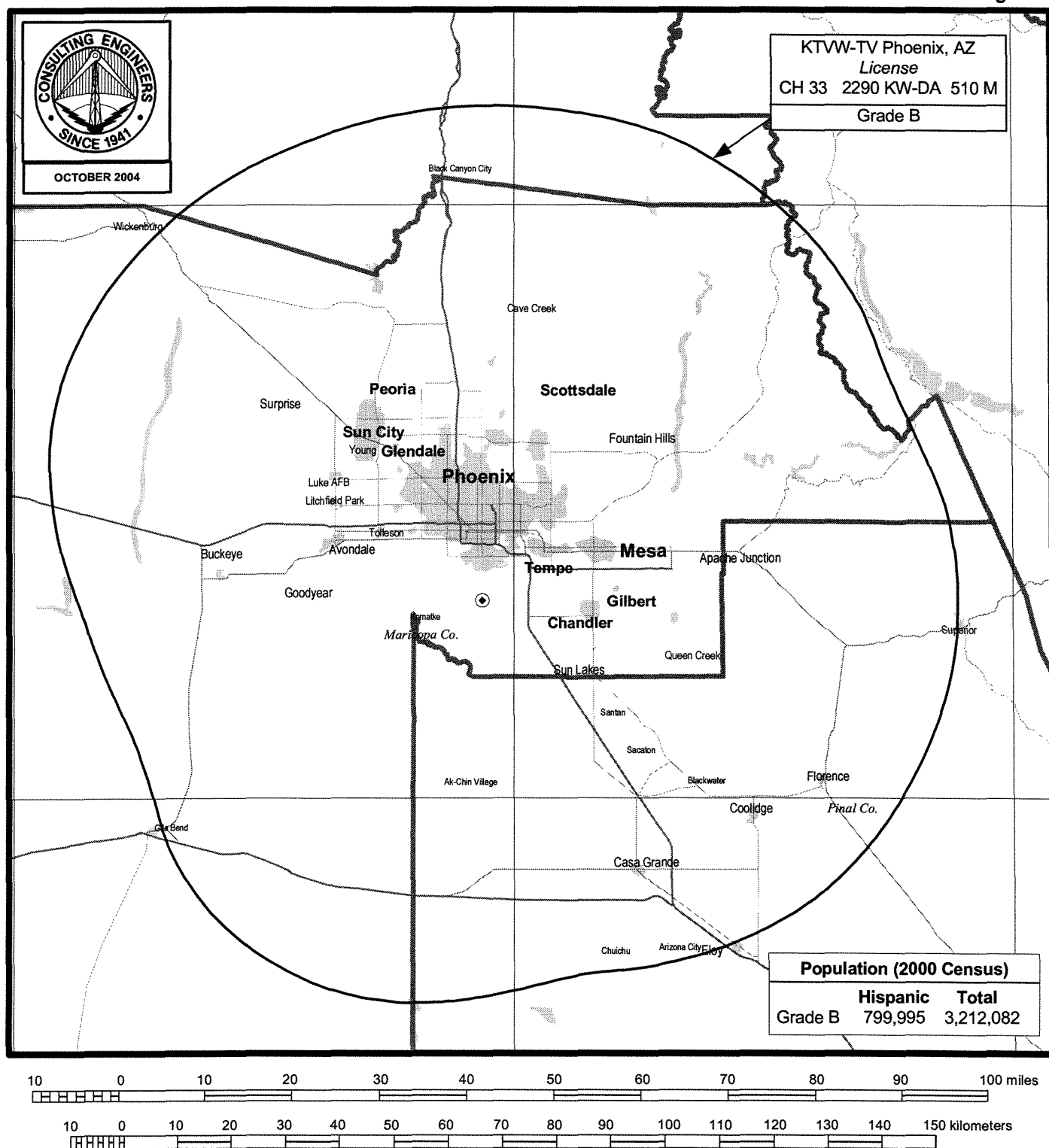


PREDICTED COVERAGE CONTOURS

TV STATION KPHZ
HOLBROOK, ARIZONA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 3

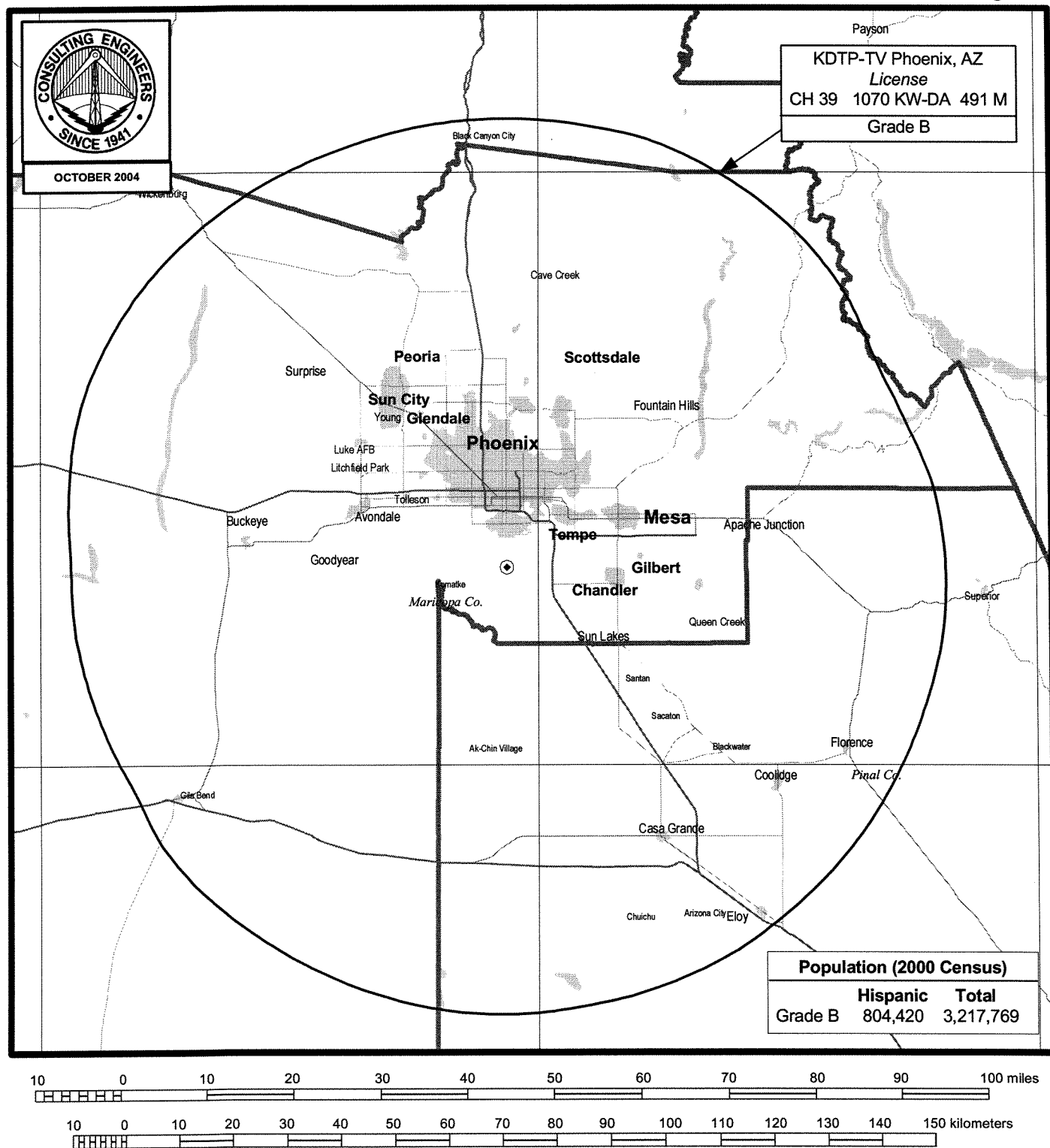


PREDICTED COVERAGE CONTOUR

STATION KTVW-TV
PHOENIX, ARIZONA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 4



PREDICTED COVERAGE CONTOUR

STATION KDTP(TV)
PHOENIX, ARIZONA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 5

POPULATION SUMMARY TABLE

<u>STATION</u>	<u>HISPANIC</u>	<u>TOTAL</u>
KPHZ(TV)	1,314	7,147
KPHZ-DT	583,416	2,747,108
KDTP(TV)	804,420	3,217,769
KTVW-TV	799,995	3,212,082
KDRX-CA	764,800	3,105,109

EXHIBIT 2

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- Qwest Dex
- White Pages
- Yellow Pages
- Map Quest
- eBay

Channel	Name	Tier	Digital
2	TV Guide	Basic	
3	KTVK - TV3, Ind.	Basic	
4	KAZT - TV7, Ind	Basic	
5	KPHO - TV5, CBS	Basic	
6	KASW - TV61, WB	Basic	
7	TeleFutura	Basic	
8	KAET - TV8, PBS	Basic	
9	WGN - TV9, Ind. Chicago	Basic	
10	KSAV TV-10, FOX	Basic	
11	Government Information	Basic	
12	KPNX - TV12, NBC	Basic	
13	KTVW - TV33, Univision	Basic	
14	KDRX - TV64, Telemundo	Basic	
15	KNXV - TV15, ABC	Basic	
16	KUTP - TV45, UPN	Basic	
17	KPPX - TV51, PAX	Basic	
18	C-SPAN US House of Reps	Basic	
19	C-SPAN 2 US Senate	Basic	
20	KDTP - TV39, Ind.	Basic	
21	KPAZ - TV21, Ind.	Basic	
22	BYU TV	Basic	
23	MTV	Basic Plus	
24	E! Entertainment TV	Basic Plus	
25	VH-1	Basic Plus	
26	Spike TV	Basic Plus	
27	Great American Country	Basic Plus	
28	The Weather Channel	Basic Plus	
29	CNN	Basic Plus	
30	CNN - Headline News	Basic Plus	
31	CNBC	Basic Plus	
32	TNT	Basic Plus	
33	ESPN	Basic Plus	
34	ESPN2	Basic Plus	



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- 6 KASW-IND
- 7 Infomercial Channel
- 8 KAET-PBS
- 9 Leased Access Channel
- 10 KSAZ-FOX
- 11 Government Access
- 12 KPNX-NBC
- 13 KAZT
- 15 KNXV-ABC
- 16 KUTP-UPN
- 17 KPPX-PAX
- 18 KDRX-Spanish →
- 19 KTVW-Spanish
- 20 Educational Access
- 21 KPAZ-Religious
- 22 KDTP-Religious
- 23 Educational Access
- 24 Local Access
- 25 EWTN
- 26 Telefutara
- 27 QVC

SPORTS

- 28 ESPN
- 29 ESPN 2
- 30 ESPN Classic Sports
- 31 ESPNEWS
- 32 FOX Sports World
- 33 Outdoor Life Network
- 34 FOX Sports Net (AZ)
- 35 Golf Channel
- 36 Speed Channel
- 37 WTBS Atlanta
- 38 WGN

FAMILY

- 70 Disney Channel
- 71 Nickelodeon
- 72 ABC Family
- 73 Hallmark Channel
- 74 Sci-Fi Channel
- 75 Lifetime Television
- 76 Cartoon Network
- 77 American Movie Classics (AMC)
- 78 Turner Classic Movies
- 79 MOVIEplex
- 80 BBC America
- 81 TV Land
- 82 Lifetime Movie Network
- 83 Inspirational Network
- 84 Toon Disney

VARIETY

- 90 VH1
- 91 MTV
- 92 USA Network
- 93 Great American Country (GAC)
- 94 Spike TV
- 95 Comedy Central
- 96 TNT
- 97 BET
- 98 E! Entertainment Television
- 99 FUSE
- 100 WE
- 101 FX
- 102 FOX Movie Channel
- 103 Oxygen Channel
- 104 SoapNet
- 105 International Channel
- 107 Galavision
- 108 GSN
- 109 Fine Living

ADVANTAGE

- 126 BYUTV
- 127 Discovery I Leisure
- 128 Discovery I
- 129 Discovery
- 130 The Scienc
- 131 Discovery
- 133 Boomerang
- 134 CSTV
- 135 FUEL
- 136 Tennis Cha
- 137 ESPN Depc
- 138 NFL Netwo

PREMIUM

- 141 HBO
- 142 HBO 2
- 143 HBO Signa
- 144 HBO Famil
- 145 HBO Come
- 146 Cinemax
- 147 More Max
- 148 ACTION MA
- 149 Thriller MA
- 152 Showtime
- 153 Showtime
- 154 Showtime
- 155 Showtime
- 156 The Movie
- 157 TMC XTRA
- 158 FLIX
- 159 Sundance
- 161 STARZ!
- 162 STARZ! Th
- 163 BLACK STA
- 165 Encore
- 166 Encore We
- 167 Encore Mys
- 168 Encore Act

..Channel Lineup

1	CLIC-Cox Learning & Info.	100	iN DEMAND Previews	411	De Pelicula Clásico (Mexico)
2	Digital Preview Channel	101	Discovery Kids	412	CineLatino (Mexico)
3	KTVK - Independent	102	The Science Channel	417	History en Español
4	HBO	103	Discovery Home	418	Discovery en Español
5	KPHO - CBS	104	Discovery Times Channel	423	Toon Disney en Español
6	KASW - WB	105	Discovery Wings	424	Boomerang en Español
7	TBS	106	Noggin	425	Sorpresa
8	KAET - PBS	108	Cox Real Estate	430	MTV Español
9	COX9	109	Cox Real Estate 2	431	VH-Uno
10	KSAZ - FOX	112	INSP - Inspiration Network	432	Bandamax (Mexico)
11	Government Access	113	EWTN	433	VideoRola (Mexico)
12	KPNX - NBC	114	BYU TV	434	mun2
13	KAZTV - Independent	115	MCTV - Educational Prog.	435	MAS! Notas
14	AZ NewsChannel	117	NASA Television	438	ESPN Deportes
15	KNXV - ABC	128	NBA League Pass Preview	439	Fox Sports en Español
16	KUTP - UPN	129	iN DEMAND Previews	444	CNN en Español
17	KPPX - PAXTV	130	Hallmark Channel	445	Canal Sur (Latin America)
18	WGN	131	Lifetime Movie Network	449	EWTN Español
19	KTVW - Univision	135	Biography	500	iN DEMAND Previews
20	KDTP - Daystar	136	History International	501	Cox iN DEMAND PPV
21	KPAZ - TBN	137	BBC America	THRU	Cox iN DEMAND PPV
22	Leased Access	138	TOON Disney	530	Cox iN DEMAND PPV
23	The Discovery Channel	139	ENCORE WAM!	531	Hot Choice PPV
24	Lifetime	140	Nicktoons	590	TEN Clips
25	TNN	141	Nickelodeon Gas	591	The Hot Network
26	TNT	143	Oxygen	592	Playboy
27	FX	144	Ovation	593	TEN Blox
28	USA	145	GSN	594	Spice Live
29	MTV	146	SoapNet	595	The Hot Zone
30	VH-1	150	WeatherScan Local	600	ESPN GAMEPLAN Schedule
31	MTV2	151	CNNfn	601	ESPN GamePlan, Full Court
32	ESPN2	152	Bloomberg Info. TV	THRU	ESPN GamePlan, Full Court
33	ESPN	153	G4TTV	607	ESPN GamePlan, Full Court
34	FOX SportsNet AZ	155	BET On Jazz	650	NBA League Pass Preview
35	Disney Channel	156	Great American Country	651	NBA League Pass
36	CNN	157	FUSE	THRU	NBA League Pass
37	Nickelodeon	158	MTV Hits	661	NBA League Pass
38	Headline News	159	VH1 Classic	671	NHL Center Ice, MLB Extra
39	ABC Family	160	VH1 Mega Hits	THRU	NHL Center Ice, MLB Extra
40	A&E	161	VH1 Country	680	NHL Center Ice, MLB Extra
41	C-SPAN 2	165	ESPNews	705	CBS KPHO HD
42	C-SPAN	166	ESPN Classic	706	KASW - WB HD
43	AMC	167	FOX Sports World	708	PBS - KAET 8 HD
44	Showtime	168	NBA TV	710	Fox KSAZ HD
45	Court TV	169	Outdoor Life Network	712	NBC KPNX HD
46	Food Network	180	FLIX	715	ABC KNXV HD
47	FOX News	181	Sundance	720	ESPN HD
48	The Travel Channel	182	ENCORE	721	iNHD
49	CMT	183	ENCORE Action	722	iNHD2
50	SCI FI	184	ENCORE Mysteries	723	Discovery HD Theater
51	Comedy Central	185	ENCORE Love Stories	730	HBO HD
52	E! TV	186	ENCORE True Stories	740	Showtime HD
53	Cartoon Network	187	ENCORE Westerns	750	STARZ! HD
54	KFPH-CA - Telefutura	188	IFC	800	DVR Recorded List
55	Mas Notas	198	NBA League Pass Preview	901	Showcase
56	KDRX - Telemundo	199	iN DEMAND Previews	902	Today's Country
57	Galavisión	300	Jewelry TV	903	Classic Country
58	KPDF - TV Azteca	301	Celebrity Shopping	904	Bluegrass
59	BET	302	Men's Channel	905	R&B and Hip-Hop
60	BRAVO	303	TV Superstore	906	Classic R&B
61	Cinemax	304	Shop At Home	907	Smooth R&B

CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary with the law firm of Shaw Pittman LLP, do hereby certify that a copy of the foregoing “**COMMENTS OF UNIVISION COMMUNICATIONS INC.**” was mailed, first class, postage prepaid this 30th day of November 2004 to the following:

Barbara Kreisman*
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 2-A666
Washington, D.C. 20554

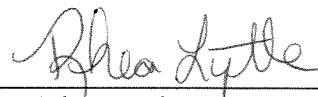
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